



BEFORE THE STATE BOARD OF EQUALIZATION
OF **THE** STATE OF CALIFORNIA

In the Matter of the Appeal of
INTERNATIONAL WOOD PRODUCTS
CORPORATION

For Appellant: Mr. F. E. **Dunigan**
President

For Respondent: Crawford H. Thomas
Chief Counsel

Richard A. Watson
Counsel

O P I N I O N

This appeal is made pursuant to section 25667 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of International Wood Products Corporation against proposed assessments of additional franchise tax and penalties in the amounts and for the years as follows:

<u>Income Year Ended</u>	<u>Tax</u>	<u>Penalties</u>
October 31, 1965	\$2,401.95	\$600.49
October 31, 1966	1,833.75	458.44
	513.33	
October 31, 1967	106.01	

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The Issues presented for determination in **this** case are: (1) whether respondent is precluded from collecting late filing penalties by a purported final agreement which allegedly settled appellant's tax liabilities for the years in question; and, if not, (2) whether respondent's imposition of late **filing** penalties was proper.

Appellant, a New York corporation, has been doing business in California continuously since December, **1958**. During 1959, appellant commenced proceedings under Chapter XI of the Bankruptcy Act. These proceedings culminated in **1963** with a court-approved creditor arrangement. In late **1966**, appellant filed California franchise tax returns for its income years 1960 through **1965** and remitted the taxes, interest, and penalties due for those years. Subsequent correspondence from appellant indicated that it was engaged in a unitary business with its sister organization in California. Consequently, respondent directed its New York office to perform an audit on appellant's California operation for appellant's income years ended October 31, **1964** through October 31, **1967**. Based upon that audit, additional amounts of tax and late filing penalties were assessed against appellant.

Appellant concedes its liability with respect to the additional taxes. It contends, however, that it **entered into a final agreement encompassing all of its tax** liability for the years in question with respondent's New York representatives. This agreement, it **is** argued, precluded respondent's subsequent assessment of late filing penalties. Respondent denies that a final agreement settling all of appellant's tax liability was reached.

Under both federal and state tax law, a prerequisite to binding agreements is strict compliance with the statutes authorizing such agreements. (**Auerbach Shoe Co.**, 21 T.C. 191, aff'd, 216 F.2d 693; **Appeal of Charles R. Penington**, Cal. St. Bd. of Equal., Jan. 20, 1954.) Sections 25781 and 25781a of the California Revenue and Taxation Code pertain to settlement agreements and provide:

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25781. The Franchise Tax Board, or any person authorized in writing by the Franchise Tax Board, **is** authorized to enter into an agreement in writing with any taxpayer in respect of any tax levied under this part for any taxable period.

25781a. If such agreement is approved by the State Board of Control, within such time as may be stated **in** the agreement, or later agreed to, such agreement shall be final and **conclusive**, and except upon a showing of fraud or malfeasance, or misrepresentation of a material fact:

(1) The case **shall** not be reopened as to matters agreed upon or the agreement modified, by any officer, employee, or agent of the State, and

(2) In **any** suit, action, or proceeding, such agreement, or any determination, assessment, collection, payment, abatement, refund, or credit made in accordance therewith, shall not be annulled, modified, set aside, or disregarded.

Appellant has neither alleged nor presented facts sufficient to establish the existence of any agreement conforming to the requirements of sections 25781 and 25781a. Under these circumstances and in view of the fact that respondent denies having made a final agreement with appellant, we must conclude that no such agreement was reached.

The only question remaining is whether respondent properly imposed late filing penalties for appellant's taxable years ended October 31, 1964, and October 31, 1965. Section 25931 of the Revenue and Taxation Code provides **in** pertinent part:

If any taxpayer fails to make and file a return required by **this** part on or before the due date of the return or the due date as extended by the Franchise Tax Board, then,

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unless it is **shown that** the failure is due to reasonable cause and not due to **willful** neglect, 5 percent of the tax shall be added to the **tax for** each month or fraction thereof elapsing between the due date of the return and the date on **which filed**, but the total addition shall not exceed 25 percent of the tax....

The burden of proving that there was reasonable cause for filing delinquent returns is on the taxpayer. (C. Fink Fischer, 50 T.C. 164; Appeal of La Salle Hotel Co., Cal. St. Bd. of Equal., Nov. 23 1966) The meaning of "**reasonable cause**" was discussed by this board in Appeal of Loew's San Francisco Hotel Corp., decided September 17, 1973, wherein we stated:

Reasonable cause which will excuse a taxpayer's **failure to** file a timely return means nothing more than the exercise of ordinary business care and prudence, or such cause- as would prompt an ordinarily intelligent and prudent businessman to have so acted under similar circumstances.

Appellant contends that the complexity of the bankruptcy proceedings and lack of funds available to pay for professional assistance in preparing its tax returns constitute reasonable cause for the delay in filing. With respect to the complexity argument, the facts show that the bankruptcy proceedings were completed in 1963, one year prior to the initial year in question. We fail to understand how their complexity could explain a delay in filing returns for subsequent years. (See Alfred W. Halling, T.C. Memo., Oct. 8, 1968, wherein the tax court found as **insufficient to** prove reasonable cause the fact that during several of the years in question appellant was involved in bankruptcy proceedings.) As to the lack of funds argument, it is undisputed that appellant's after-audit net income for the two income years in question was \$45,490 and 835,159, respectively. In any event this argument does **not**, nor could it, establish reasonable cause since the filing of tax returns is a personal nondelegable duty of each taxpayer. (See Max Dritz, et al., T.C. Memo., Aug. 27, 1969, **aff'd per curiam**,

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427 F.2d 1176.) On balance, it is clear that appellant has not demonstrated that it exercised ordinary business care and prudence with respect to the filing of the returns in question. Consequently, it has not carried its burden of proving reasonable cause.

In accordance with the views expressed herein, we must sustain respondent's determinations, both with respect to the purported final agreement and the imposition of late filing penalties.

O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 25667 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of International Wood Products Corporation against proposed assessments of additional franchise tax and penalties in the amounts and for the years as follows:

<u>Income Year Ended</u>	<u>Tax</u>	<u>Penalties</u>
October 31,		\$600.49
October 31, 1966	\$1,833.75	458.44
October 31, 1967	513933	
	106.01	

be and the same is hereby sustained.

Done at Sacramento, California, ~~this~~ 19th day of February, 1974, by the State Board of Equalization.

Robert H. Free, Chairman
John W. Lynch, Member
John H. ..., Member
..., Member
William W. ..., Member

ATTEST: W. W. ..., Secretary